MILLER), and the Senator from Florida (Mr. NELSON) are necessarily absent.

I further announce that, if present and voting, the Senator from North Dakota (Mr. DORGAN) would vote ''aye.''

Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI), the Senator from Oklahoma (Mr. INHOFE), the Senator from Arizona (Mr. KYL), the Senator from Alaska (Mr. MURKOWSKI), the Senator from Kansas (Mr. ROBERTS), the Senator from Alabama (Mr. SESSIONS), the Senator from Alabama (Mr. SHELBY), the Senator from Ohio (Mr. VOINOVICH), the Senator from Arkansas (Mr. HUTCHINSON), the Senator from Arizona (Mr. MCCAIN), and the Senator from Tennessee (Mr. THOMPSON) are necessarily absent.

I further announce that if present and voting the Senator from Oklahoma (Mr. INHOFE) and the Senator from Arizona (Mr. KYL) would each vote ''aye.''

The PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 81, nays 0, as follows:

[Rollcall Vote No. 5 Ex]

YEAS—81

Allard	DeWine	Lieberman
Allen	Durbin	Lincoln
Baucus	Edwards	Lott
Bayh	Ensign	Lugar
Bennett	Enzi	McConnell
Biden	Feingold	Mikulski
Bingaman	Feinstein	Murray
Bond	Fitzgerald	Nelson (NE)
Breaux	Frist	Nickles
Brownback	Graham	Reed
Bunning	Gramm	Reid
Burns	Grassley	Rockefeller
Byrd	Gregg	Santorum
Campbell	Hagel	Sarbanes
Cantwell	Harkin	Schumer
Carper	Hatch	Smith (NH)
Chafee	Helms	Smith (OR)
Cleland	Hollings	Snowe
Clinton	Hutchison	Specter
Cochran	Inouye	Stabenow
Collins	Jeffords	Stevens
Conrad	Johnson	Thomas
Corzine	Kerry	Thurmond
Craig	Kohl	Torricelli
Crapo	Landrieu	Warner
Daschle	Leahy	Wellstone
Dayton	Levin	Wyden

NOT VOTING—19

Akaka	Inhofe	Roberts
Boxer	Kennedy	Sessions
Carnahan	Kyl	Shelby
Dodd	McCain	Thompson
Domenici	Miller	Voinovich
Dorgan	Murkowski	
Hutchinson	Nelson (FL)	

The nomination was confirmed.

LEGISLATIVE SESSION

The PRESIDENT pro tempore. Under the previous order, the Senate will return to legislative session.

HOPE FOR CHILDREN ACT—Continued

The PRESIDENT pro tempore. The clerk will report the title.

The assistant legislative clerk read as follows:

A bill (H.R. 622) to amend the Internal Revenue Code of 1986 to expand the adoption credit, and for other purposes.

The PRESIDENT pro tempore. The Senator from Vermont.

Mr. LEAHY. Mr. President, I understand under the unanimous consent request I am to be recognized, but the distinguished Senator from Illinois and the distinguished Senator from Oregon are here, and I ask unanimous consent it be in order first to recognize the distinguished Senator from Illinois for 2 minutes, then the distinguished Senator from Oregon for 1 minute, and the distinguished Senator from Oklahoma, the Republican assistant leader, for 30 seconds, and then we revert back to my original time.

The PRESIDENT pro tempore. Is there objection to the several requests?

There being no objection, the requests are agreed to.

The Senator from Illinois.

The PRESIDENT pro tempore. The Senator from Illinois.

AMENDMENT NO. 2714 TO AMENDMENT NO. 2698

(Purpose: To provide enhanced unemployment compensation benefits)

Mr. DURBIN. Pursuant to an earlier unanimous consent request, I am sending to the desk an amendment being offered by me on behalf of the majority leader.

The PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

The Senator from Illinois [Mr. DURBIN], for himself, Mr. WELLSTONE, Mr. DAYTON, Ms. LANDRIEU, and Mrs. LINCOLN, proposes an amendment numbered 2714.

Mr. DURBIN. I ask unanimous consent reading of the amendment be dispensed with.

The PRESIDENT pro tempore. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

Mr. DURBIN. Mr. President, this is part of the economic stimulus package. It is an amendment agreed to by both sides, Democrats and Republicans, to extend the unemployment insurance benefits to those States which will provide protection, expanded coverage for part-time workers who otherwise would not be eligible for unemployment compensation, and expand coverage to low-wage and recent hires who are also out of work and cannot be covered by unemployment. It also increases benefit levels under unemployment compensation by 15 percent or $25 per week, whichever is greater. These proposals are temporary. All of the funding comes from Federal funding sources from the unemployment insurance fund. The amendment costs about $15 billion in one year, but it will provide direct, immediate relief to unemployed people across America. When we return next Tuesday, I will speak to this amendment at length.

I hope my colleagues will join me in supporting it on a bipartisan basis.

I yield the floor.

The PRESIDENT pro tempore. The Senator from Oregon.

Mr. SMITH of Oregon. Mr. President, I thank the chairman of the Judiciary Committee for allowing me a minute to simply notify the Senate that I will redo my amendment and try to get 60 votes. It will come back and be filed later today. It will have a 2-year time period beginning January 1 of this year and going for 2 years, with a 30-percent depreciation bonus, and it will also specifically include the motion picture industry so that they can have the advantage of this stimulus as well.

I think it is critical we do what the the Senator from Illinois is talking about, and it is also critical we do something that is actually stimulatory of the economy. Two years is the absolute minimum, if we are serious about this part of the stimulus bill.

I yield the floor.

The PRESIDENT pro tempore. The Senator from Oklahoma, Mr. Nickles.

Mr. NICKLES. I ask unanimous consent that it be in order I ask for the yeas and nay on amendment No. 2698.

The PRESIDENT pro tempore. Is there objection to the request that it be in order?

Mr. LEAHY. Reserving the right to object—I understand there is no objection.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Is there a sufficient second?

There is a sufficient second. The yeas and nays are ordered.

Mr. NICKLES. I thank my colleague.

The PRESIDENT pro tempore. The Senator from Vermont.

Mr. LEAHY. Is the Senator from Vermont correct that following my statement the distinguished senior Senator from Utah is to be recognized?

The PRESIDENT pro tempore. That is correct.

JUDICIAL NOMINATIONS

Mr. LEAHY. I thank the distinguished Presiding Officer.

Mr. President, I appreciate the fact that the majority leader and the assistant majority leader moved to consider additional judicial nominations today. Both Senator DASCHLE and Senator REID have been working very diligently to clear these nominations which were put on the Executive Calendar as we went out of session prior to the new year. They have worked very hard to return the Senate's consideration of judicial nominations to a more orderly and open process. I compliment the Senator from South Dakota and the Senator from Nevada for their efforts and thank them for their leadership. Along with our Senate leaders, many Senators have been working to move away from the anonymous holds and inaction on judicial nominations that characterized so much of the period from 1996 through the year 2000. Since the change in majority last summer, we have already made a difference in terms of both the process and its results. The number of vacancies and the number of confirmations have finally begun to move in the right directions.

As we begin this new session, I will take a moment to report where we are

in the handling of judicial nominations and to outline the road ahead. The distinguished Presiding Officer knows more of the history of this body than any of the nearly 260 or 270 Senators with whom I have served—I suspect more than a lot of others with whom he has served. I hope he will not feel it presumptuous if I take a few minutes to touch on the history and legacy of the last 6 years as it relates to judicial nominations.

Those last 6 years have left a residue of problems that I think are going to take a continuing effort to purge. We are not going to do it in 1 day or 1 weekend, but it is going to have to be a continuing effort of both parties, Republicans and Democrats, and the White House.

After going through that history, I am going to offer the steps that we in the majority will take in good faith to undo the damage of the last 6 years. Then I am going to call on the White House to help us take similar steps to help move the process forward. I do this both in my capacity as the Senator from Vermont—a position I honor, and I am always thankful to the people of my great and beautiful State for letting me be here—but also carrying the responsibility my caucus has given me by allowing me to be chairman of the Senate Judiciary Committee.

One of the lessons I learned early on in this body from the distinguished Presiding Officer is that if you are the chairman of a committee, you have a responsibility to that committee, to your caucus, but also to the Senate, the whole Senate. I respect that.

So let me talk about the Judiciary Committee. In a span of less than 6 months, and in a year that was tumultuous for the Nation and the Senate, the Judiciary Committee, between July and the end of the session in December, held hearings on 34 judicial nominees. We reported 32 and the Senate confirmed 28. As of today, we add 2 more and the Senate has now approved 30 of those judicial nominations.

They are conservative Republicans, but nearly all were unanimously approved by Democrats, Republicans and Independent alike on the Judiciary Committee and by the Senate, in a democratically-controlled Senate.

We reported more judicial nominees after the August recess than in any of the preceding 6 years, and more than in any similar period over the preceding 6½ years. The Senate Judiciary Committee during the time I have been chairman did not have and has not yet had a year in which to work. Last session we had less than 6 months. Still, in the last 5 months of last year, the Senate confirmed almost twice as many judges as were confirmed in the first year of the earlier Bush administration. We also confirmed more judges, including twice as many judges to the courts of appeals, as in the first year of the Clinton administration. The Senate confirmed the first new member of the Fifth Circuit in 7 years, the first new judge for the Fourth Circuit in 3 years, and the first new judge for the Tenth Circuit in 6 years.

Of course, more than two-thirds of the Federal court vacancies continue to be on the district courts, and the administration has been slow to make nominations to the vacancies in these trial courts. In the last 5 months of last year, the Senate confirmed a higher percentage of the President's district court nominees than a Republican majority had allowed the Senate to confirm in the first session of either of the last two Congresses with a Democratic President.

Last year, the White House did not make nominations to almost 80 percent of the current trial court vacancies. When we came back to session, we began with 55 out of the 69 vacancies without nominees.

Since the change in majority last summer, we have acted in the Senate to build better practices into the confirmation process for Federal judges and to make it more orderly. We made some progress at the end of last year when, after many months, the White House and our Republican colleagues finally agreed to limited steps to update and to simplify the committee questionnaire, which seemed to have grown like Topsy over the years.

And we have opened up the process as never before. For the first time, the Judiciary Committee is making public the blue slips sent to home State Senators. Until last summer these matters were treated as confidential materials. They were restricted from public view.

We have moved nominees with less time from hearings to the committee's business meeting agenda, and then onto the floor, where nominees have received timely rollcall votes and confirmations. Over the preceding 6½ years, at least eight judicial nominees who completed a confirmation hearing were never considered by the committee and were simply abandoned without any action. Before my chairmanship, there were at least eight judicial nominees who got a hearing but never even got a vote—not a vote on the floor, Mr. President, they never got a vote in committee.

Also, the past practices of extended unexplained anonymous holds on nominees after a hearing were not evident in the second half of last year, as they had been in the recent past.

By the time the Judiciary Committee was reorganized and began its work last summer, the vacancies on the Federal courts were peaking at 111. That is what I faced as the Committee began its work—111 vacancies. Since then, 25 additional vacancies have arisen. Through hard work in the limited time available to us, we were able to outpace this high level of attrition. By contrast, when my friends on the other side of the aisle took charge of the Senate in January 1995, until the majority shifted last summer, judicial vacancies rose from 65 to more than 100, an increase of almost 60 percent.

The Judiciary Committee simultaneously, during those last 5 months of last year, held 16 confirmation hearings for executive branch nominees. We sent to the Senate nominees who were confirmed for 77 senior executive branch posts, including the Director of the FBI, the head of the Drug Enforcement Administration, the Commissioner of the Immigration and Naturalization Service, the Director of the U.S. Marshals Service, the Associate Attorney General, the Director of ONDCP, the Director of the Patent and Trademark Office, 7 assistant attorneys general, and 59 U.S. attorneys.

Senators may recall that soon after the Senate confirmed Judge Roger Gregory as the first new Federal judge nominated by this President last July, the White House counsel said in an interview that he did not expect the Senate to confirm more than five judges before the end of 2001. Just think about that: The White House said last July that they did not expect the Senate to confirm more than five judges before the end of 2001.

Of course, that estimate of 5 was actually an upward revision. Initially some on the other side of the aisle, after the midyear change of majority, had proclaimed that the Democratic majority would not confirm a single judge. The White House, I think, trying to appear more bipartisan, upped the estimate from zero to 5. Of course, we achieved much more than that and confirmed more than 5 times the number of judges that the White House counsel had predicted.

One might have thought from the constant barrage of partisan criticism that 2001 resembled 1996, a year in which a Senate Republican majority confirmed only 17 judges, none of them appellate-level nominees.

The worst fear of some, it has been clear, is that Democrats would treat Republican nominees as poorly as Democratic judicial nominees were treated by a Republican Senate. That is not what has happened. In just 5 months we went on to confirm 28 additional judges, as I have said, more than five times the number the White House predicted we would confirm. Think of that, Mr. President—five times what the White House was telling the American people we would confirm.

The Senate can be proud of its record in the first session of the 107th Congress of beginning to restore steadiness in its handling of judicial nominees. I want to build on that record in the second session of the 107th.

Yesterday the Judiciary Committee held another hearing for judicial nominees. That was the 12th since July. This morning the Senate is confirming the first two judges of this session and the 29th and 30th since the change in majority last summer.

The legacy of strife over the filling of judicial vacancies that we all must work to overcome began in 1996, when months went by without the Republican Senate acting on judicial nominations from a Democratic President.

Later that same year, outside groups began forming to raise money on their pledge to block action on judicial nominees and to ''kill'' Clinton nominees.

As the new session opened in 1997, efforts were launched on the Republican side of the aisle to slow the pace of Judiciary Committee and Senate proceedings on judicial nominations and to erect new obstacles for nominees.

The results were soon apparent delaying the process, and they persisted throughout the remainder of President Clinton's administration.

Those times stand in sharp contrast to the last 5 months of last year, in which I noticed a hearing within 10 minutes of becoming chairman of the full committee, chaired unprecedented hearings during the August recess, and held hearings and votes throughout the period after September 11 and during the closure of our offices and hearing rooms after Senator DASCHLE and I received anthrax filled letters.

I want to emphasize that. During that time, 50 men and women who were nominated and who went through all the vetting, FBI backgrounds, and everything else, never received a hearing and a committee vote, many after waiting for years.

They included Judge James A. Beaty, Jr., Judge James Wynn, and J. Rich Leonard, nominees to longstanding vacancies on the Fourth Circuit; Judge Helene White, Kathleen McCree-Lewis and Professor Kent Markus, nominees to the Sixth Circuit; Allen Snyder and Professor Elana Kagan, nominees to vacancies on the D.C. Circuit; and James Duffy and Barry Goode, nominees to the Ninth Circuit; Bonnie Campbell, the former Attorney General of Iowa and former head of the Violence Against Women Office at the Department of Justice, nominated to the Eighth Circuit; Jorge Rangel, H. Alston Johnson, and Enrique Moreno, each nominated to the Fifth Circuit; Robert Raymar and Robert Cindrich, among the nominees to the Third Circuit; and District Court nominees like Anabelle Rodriguez, John Bingler, Michael Schattman, Lynette Norton, Legrome Davis, Fred Woocher, Patricia Coan, Dolly Gee, David Fineman, Ricardo Morado, David Cercone, and Clarence Sundram.

None of these qualified nominees was given a vote.

Over the course of those years, Senate consideration of nominations was often delayed for not months but years.

It took more than four years of work to get the Senate to vote on the nominations of Judge Richard Paez and Judge William Fletcher; almost three years to confirm Judge Hilda Tagle; more than two years to confirm Judge Susan Mollway, Judge Ann Aiken, Judge Timothy Dyk, Judge Marsha Berzon, and Judge Ronald Gould; almost two years to confirm Judge Margaret McKeown and Judge Margaret Morrow and more than a year to confirm several others during the preceding 6½ years of Republican control.

During those years, the Republican majority in the Senate went an entire session without confirming even a single judge for the Courts of Appeals.

As few as three appellate nominees were granted hearings and committee votes in an entire session. During that time, the Republican majority averaged eight hearings a year for judicial nominees and had as few as six during one entire session. One session of Congress, the Republican majority allowed only 17 judges to be confirmed all year, and that included not a single judge to any Court of Appeals. All the while, the judicial vacancy rate continued to worsen.

The problems did not end when President Clinton left office. New problems have arisen through unilateral actions taken by the Bush administration in its handling of judicial nominations.

Fifty years ago, President Dwight Eisenhower started a policy of having the American Bar Association do a review of judicial nominees. That practice by President Eisenhower was followed by President Kennedy. It was then followed by President Johnson. It was then followed by President Nixon. It was then followed by President Ford. It was then followed by President Carter. It was then followed by President Reagan. It was then followed by the first President Bush. It was then followed by President Clinton. But when this new White House came in, they decided summarily to end that 50-year practice.

Senators are still going to ask at least to have that ABA background done. It does not mean that peer review is controlling, by any means. What is happening now is that instead of having that ABA peer review done simultaneously with the FBI background check and having the ABA report come to the Senate around the same time as the FBI report, the Administration sends up the nominee, and the Senate has to wait 6 or 8 weeks more to get the ABA vetting. The vetting processes could have done both at the same time and potentially save 2 months in the process.

This unilateral approach in vetting nominees and disregarding the Senate's longstanding practice is similar to another disregarding of the longstanding practice that encouraged consultation with home-State Senators, both Republicans and Democrats. That has needlessly complicated the Senate's handling of several of the nominations.

I realize we are looking back over the first year of a new administration. But I am laying out this history to them because it is a history of the handling of nominees that has worked fairly well for Republicans and Democrats alike since President Eisenhower's time. Maybe we ought to go back to the things that have worked.

In addition, the White House has not responded to our repeated requests to help the Senate work through residual issues caused by the Republican Senate's earlier actions and inactions related to several circuit courts.

We hear about all the vacancies on the circuit courts without mention of the fact that there have been previous qualified nominees for the vacancies on whom the Republican-controlled Senate refused to proceed. That has created problems that have grown and festered over time. They are not going to be remedied immediately, especially in the absence of White House cooperation.

One of the best friends I have in the Senate is Senator ORRIN HATCH of Utah. Senator HATCH and I can sit down and work out many of these things. But we cannot do it by ourselves if the White House is uninterested in working with us. They ought to understand that we are able to work out most of our problems. They ought to take advantage of that and work with us.

Let us turn to look at where we go from here. I think we made a good beginning in the first 6 months of Democratic leadership in the Senate. But the way forward is not easy. If we want to have continued progress, it is going to require leadership and cooperation and good will not only within the Senate but by the White House.

These are the steps that the Judiciary Committee will take in good faith. I want to lay this out for my colleagues.

First, we are going to restore steadiness in the hearing process. The committee will hold regular hearings at a pace that will exceed the pace of the last 6 years. Following longstanding committee practice, each hearing typically will involve several nominees—a circuit court nominee and a number of district court nominees.

Since the Senate's reorganization last July, we have convened judicial nominations hearings each and every month. I mention that because, by contrast, in the 72 months that the Republican majority most recently controlled scheduling such hearings, in 30 of those months no hearings were held at all, and in another 34 months only one hearing was held.

Yesterday we held our 12th hearing since July. If we are able to keep pace, we will hold more hearings this session than were held in any of the 6½ years of Republican control and more than twice as many as were held in some of those years.

Secondly, we will include hearings for a number of controversial nominees who do not have a blue slip problem. We will convene a hearing the week after next on the nomination of Charles W. Pickering for the Fifth Circuit Court of Appeals. I fully expect we will also have hearings on other nominations for which consensus will be difficult, including such nominees as Judge Priscilla Owen, Professor Michael McConnell, and Miguel Estrada.

Third, we will continue to seek a cooperative and constructive working relationship not only with our colleagues on the other side of the aisle but also with the White House. I ask the White

House to help make the confirmation process more orderly and less antagonistic, and thus make it more productive.

Finding our way forward out of the legacy of the last 6 years is going to require some White House cooperation. The President represents one of our three branches of Government. We in the Senate represent one. We are talking about working together in matters that affect our third branch. I take very seriously the advise and consent clause of the Constitution. It does not say: Advise and rubberstamp. It says advise and consent. The distinguished Presiding Officer, the President pro tempore, knows better than anybody else in this body the kind of debate that went on at the founding of this country on the constitutional requirement of advice and consent. Our Founders made very sure we, the people, had a voice in these appointments. This is a democracy, not a regency.

I will strive—whether we have a Democratic President or a Republican President—to uphold the right, and not just the right, the duty of the Senate, to fulfill its advise and consent role. It is one of the most important roles this body has ever had because it is exclusively in this great Chamber, in this great body. Senators really do not follow their oath of office if they do not uphold that right and that privilege and that duty of advice and consent.

I have heard the distinguished Presiding Officer speak of the number of Presidents with whom he has served. He very correctly has pointed out, we do not serve under a President, we serve with a President.

I have enormous respect for all Presidents I have served with, Republicans and Democrats. They are a major part of our Democratic framework. Whoever is President carries an awesome burden and should be helped in carrying out that burden. But we carry an awesome burden on advice and concept, as well. Let us try to bring the duties and rights and obligations at one end of Pennsylvania Avenue closer to the duties and rights and obligations at the other end of Pennsylvania Avenue and see how we might work together.

So today I ask the President, for his part, to consider several steps, each of which makes a tangible improvement in the consideration of judicial nominations.

First, the most progress can be made quickly if the White House would begin working with home State Senators to identify fair-minded, nonideological, consensus nominees to fill these court vacancies.

One of the reasons that the committee and the Senate were able to work as rapidly as we did in confirming now 30 judges in the last few months was because those nominations were strongly supported as consensus nominees by people from across the political and legal spectrums.

I have heard of too many situations, in too many States, involving too many reasonable and constructive home State Senators, in which the White House has shown no willingness to work cooperatively to find candidates to fill vacancies. The White House's unilateralism is not the way the process is intended to work. It is not the way the process has worked under past administrations. I urge the White House to show greater inclusiveness and flexibility and to help make this a truly bipartisan enterprise.

Logjams persist in several settings, the legacy of the last 6 years. To make real progress, the White House and the Senate should work together to repair the damage and move forward.

As I said before, the Constitution directs the President to seek the Senate's advice and consent in his appointments to the Federal courts. The lack of effort on the advice side of that obligation gives rise to a general impression, heightened by the White House's refusal to work cooperatively with some home State Democratic Senators, and by its unwillingness to listen to suggestions to continue the bipartisan commissions that have been a tradition, for years, in many States, that the White House and some in the Senate are intent on an ideological takeover of our courts.

With the circuits so evenly split in so many places, nominees to the Courts of Appeals may have a significant impact on the development of the law for decades to come. Some of us are concerned that there not be a rollback in the protections of individual rights, civil rights, workers' rights, consumers' rights, business rights, privacy rights, and environmental protection.

Secondly, I ask the President to reconsider his early decision on peer review vetting. It has needlessly added months to the time required to begin the hearing process for each nominee. For more than 50 years, the American Bar Association was able to conduct its peer reviews simultaneously with the FBI background check procedures. As I said earlier, that meant that when nominations were sent to the Senate, the FBI report and the ABA report were sent at approximately the same time, and we could start moving forward to review nominations and schedule hearings from that day.

We had occasions last year when we proceeded with hearings with fewer District Court nominees than I would have liked because recent nominees' files were not yet complete. I worry that same problem will be repeated this year.

For example, in relation to the FBI and the ABA background materials on the 24 District Court nominations that we received in the last day or so, we are not going to have all that material until March or April. That is regrettable. It was avoidable. We could have had it all here today so we could start reviewing those nominations and considering them for hearing agendas right away.

Now, no Senator is bound by the recommendations of the ABA. And I would never suggest that a Senator be bound by that. Each Senator is bound by their own conscience and their own sense of what is right. But the White House can make it clear that it is not bound either but that it is restoring a traditional practice—not because it intends to be bound by the results of that peer review but solely to remove an element of delay that it had inadvertently introduced into the confirmation process.

The White House can expressly ask the ABA, if they want, not to send the results of its peer reviews to the executive but only to transmit them to the committee. Few actions available to either the Senate or the White House could make as constructive a contribution as would the President's resolution of this problem. I ask him to seriously and thoughtfully consider taking it. It would take 1 minute of decision; it would save months of time.

In conclusion, whether we succeed in improving the confirmation process is going to depend in large measure on whether our goals are shared by Republican Senators and the White House. We will not have repaired the damage that has been done if we make progress this year and the improvements we are able to make are not institutionalized and continued the next time a Democratic President or, for that matter, a different Republican President is the one making judicial nominations.

In the statements I have heard and read from the Republican side, I have not heard them concede any shortcomings in the practices they employed over the previous 6½ years, even though since the change in majority last summer, we have exceeded their pace and productivity over the prior 6½ years. If their efforts were acceptable or praiseworthy as some would argue, I would expect them to commend our better efforts since last July.

If they did things they now regret, their admissions would go far in helping establish a common basis of understanding and comparison. Taking that step would be a significant gesture. It is something that has not yet occurred. I wish it would.

Whether it occurs or not, I want to move forward. The nominees voted on this morning and those included at our most recent hearings yesterday are clear evidence, again, that consensus nominees with widespread bipartisan support are more easily and quickly considered by the committee and confirmed by the Senate. I believe there was not a single vote against either of the judges confirmed today.

There are still far too many judicial vacancies. We have to work together to fill them. We have finally begun moving the confirmation and vacancy numbers in the right directions. The way forward is difficult. Democrats alone cannot achieve what should be our common goal of regaining the ground lost over the last 6 years. But all of us together can achieve that. I invite each with a role in this process to join that effort.

If I could close on a personal note, as I said before, the ranking member of the Senate Judiciary Committee, the senior Senator from Utah, is a close personal friend. I have been in the position of ranking member of that committee while he was chairman. I know many times he had to urge actions to move forward, actions with which many in his caucus did not agree. But he did, and I commend him for it. For my part, I pledge, during this year or whatever time I am chairman, to meet on a regular basis with my friend from Utah to try to iron out as many problems as we can. I believe there is a mutual respect between the two of us. But I would also urge the White House to realize that they do not act in a vacuum, to understand it is a democracy, to take a moment to reread the advice and consent clause. Let us work together. Things will go a lot faster and a lot better that way.

I yield the floor.

The PRESIDING OFFICER (Mr. LEAHY). The distinguished senior Senator from Utah.

Mr. HATCH. Mr. President, I don't want to take this time to engage in statistical judo on judicial nominees. I personally have appreciated our chairman and the work he did last year. We are friends, and I intend to work very closely with him. Hopefully we can put through a lot of judges this year, as we did for President Clinton in his second year.

Mr. President, the record is clear. Here are the true facts, the numbers for the first years and for the current session. I gave an extensive speech at the end of last year, and it shows where we stand today and what we did to establish a near record with 377 Clinton judges. That is five fewer than for President Reagan, the all-time champion of confirmed judges. I can say, categorically, there would have been at least three more than what President Reagan had, had it not been for holds on the Democrat side of the Chamber. So the all-time champion would have been William Jefferson Clinton as President. The Democrats, not the Republicans, stopped the approximately eight or nine additional Clinton nominees who otherwise would have been confirmed.

Sometimes it was for petty reasons that holds were put on. But the fact is that holds came from the other side. One thing we did not do is apply any litmus test. Today, some special interest groups are urging the Democrats to apply one. Had we Republicans applied an abortion litmus test to President Clinton's nominees, perhaps fewer than a dozen judges would have gone through. If the Senate were to get into the litmus test game, we would certainly hurt this body and this country a great deal. Everyone knows that when we elect a President, we are choosing the person who has the power to pick the judges in this country. As long as the President's nominees are qualified, the Senate ought to approve the President's judges.

There were a variety of reasons that prevented several of President Clinton's nominees from getting confirmed, including some who lacked the support of their home State Senators. But the overall record makes clear that we were fair. As my colleague, Senator LEAHY, said, our job was not to simply rubberstamp President Clinton's judges. The current President does not expect a rubber stamp either. So, mere numbers and statistics—as my distinguished chairman, the Senator from Vermont, listed—do not give the full picture because they do not explain the reasons in particular cases. And our current President has been more deliberative, more cooperative in his selection, evaluation, and nomination of judges than any other President while I have been serving in the Senate.

I have to be honest, I am concerned about the tone I have heard today. But I still remain cautiously optimistic that the Senate will do the right thing with regard to judges, and I keep hope alive that this bitter tone on judicial nominees will subsist. I think we are above that.

At the outset of the second session of the 107th Congress, we have an opportunity in the Senate to make a real difference in the administration of justice in this country. This opportunity is the chance to halt the vacancy crisis that presently plagues the Federal courts. A new congressional session provides many opportunities to make changes and allocate our time to those matters most pressing. Our Nation is facing many great challenges, ranging from threats of terrorism at home and abroad to the struggling economy. We have a lot of work to do.

One of the most pressing matters we must address this session is the vacancy crisis in the Federal court system. I was interested in some of the statistics my colleague from Vermont gave. In 1992, the Democrats controlled the Senate and therefore the Senate Judiciary Committee. On election day 1992, when William Jefferson Clinton was elected President of the United States, there were 97 vacancies and 54 of President Bush's nominees left hanging without a vote. (Some of those 54 neglected nominees have now been renominated by the current President Bush.) Of the 54, there were about 6 who were nominated so late in the session that there wasn't really an opportunity on the part of Senator BIDEN or the committee to confirm them. So, really, 48 were left hanging without a vote. By contrast, when George W. Bush was elected President, there were 67 vacancies—30 fewer than eight years earlier when the Democrats controlled the Senate Judiciary Committee. And for those 67 vacancies, there were 41 nominees left hanging. In other words, the Republicans left 13 fewer nominees than the Democrats did. But, of the 41, 9 were nominated so late in that session that there was no chance any Judiciary Committee chairman could have gotten them through. So, in essence, there were 32 nominees that did not get voted on at the end of the Clinton Administration.

The fact is that 32, contrasted with the 48 that the Democrats left hanging when they controlled the Senate, is a pretty good record. It was the best we could do given the individual circumstances presented. A couple were held up because of home State Senators. I could not solve that problem. Neither could Senator LEAHY. There were some who were held up because of further investigation that had to be made and questions that had arisen. Some were held up because of other matters in the FBI reports or problems that existed that we could not solve before election day.

On January 1 of this year, Supreme Court Chief Justice William Rehnquist released his 2001 year-end report on the Federal judiciary. I ask unanimous consent it be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

2001 YEAR-END REPORT ON THE FEDERAL JUDICIARY

I. OVERVIEW

The 2001 Year-End Report on the Federal Judiciary is my 16th. 2001 will surely be remembered by the entire country, including the federal Judiciary, for the terrorist attacks of September 11 and the anthrax contamination that followed.

I received word of the first strike on the World Trade Center as the 26 federal judges who are members of the Judicial Conference of the United States were preparing to convene at the Supreme Court the morning of September 11. It soon became clear that we would have to cancel the Conference session and evacuate the building, the first cancellation of a Conference meeting since its creation in 1922.

Just six and a half weeks later, our Court was forced to evacuate the building again after traces of anthrax were found in our offsite mail facility. For the first time since our building opened in 1935, the Court heard arguments in another location—the ceremonial courtroom in the District of Columbia E. Barrett Prettyman Federal Courthouse. The Court was also forced out of its quarters in the Capitol when the British burned part of the Capitol building in August 1814.

Despite the effects of events since September 11, the federal courts, along with the rest of our government, have gotten back to business, even if not business as usual. Our Court has kept its argument schedule, federal (and state) courts have met, albeit with heightened security, and within three weeks, the Judicial Conference completed by mail all of the business that had been on the schedule for September 11 and that could not be postponed.

II. ENSURING A WELL-QUALIFIED AND FULLY STAFFED JUDICIAL BRANCH

The federal courts were created by the Judiciary Act of 1789, which established a Supreme Court and divided the country into three circuits and 13 districts. This structure has obviously changed greatly since 1789, but one thing has not changed: the federal courts have functioned through wars, natural disasters, and terrorist attacks. During times such as these, the role of the courts becomes even more important in order to enforce the rule of law. To continue functioning effectively and efficiently, however, the courts must be appropriately staffed. This means

that necessary judgeships must be created and judicial vacancies must be timely filled with well-qualified candidates.

Promptly filling vacant judgeships

It is becoming increasingly difficult to find qualified candidates for federal judicial vacancies. This is particularly true in the case of lawyers in private practice. There are two reasons for these difficulties: the relatively low pay that federal judges receive, compared to the amount that a successful, experienced practicing lawyer can make, and the often lengthy and unpleasant nature of the confirmation process.

Of the inadequacy of judicial pay I have spoken again and again, without much result. Judges along with Congress have received a cost-of-living adjustment this year, and for this they are grateful. But a COLA only keeps judges from falling further behind the median income of the profession. I can only refer back to what I have previously said on this subject.

I spoke to delays in the confirmation process in my annual report in 1997. Then as now I recognize that part of the problem is endemic to the size of the federal Judiciary. With more judges, there are more retirements and more vacancies to fill. But as I said in 1997, ''[w]hatever the size of the federal judiciary, the President should nominate candidates with reasonable promptness, and the Senate should act within a reasonable time to confirm or reject them. Some current nominees have been waiting a considerable time for a Senate Judiciary Committee vote or a final floor vote. The Senate confirmed only 17 judges in 1996 and 36 in 1997, well under the 101 judges it confirmed during 1994.''

At that time, President Clinton, a Democrat, made the nominations, and the Senate, controlled by the Republicans, was responsible for the confirmation process. Now the political situation is exactly the reverse, but the same situation obtains: the Senate confirmed only 28 judges during 2001. When the Senate adjourned on December 20th, 23 court of appeals nominees and 14 district court nominees were left awaiting action by the Judiciary Committee or the full Senate. When I spoke to this issue in 1997, there were 82 judicial vacancies; when the Senate adjourned on December 20th there were 94 vacancies. The Senate ought to act with reasonable promptness and to vote each nominee up or down. The Senate is not, of course, obliged to confirm any particular nominee. But it ought to act on each nominee and to do so within a reasonable time. I recognize that the Senate has been faced with many challenges this year, but I urge prompt attention to the challenge of bringing the federal judicial branch closer to full staffing.

The combination of inadequate pay and a drawn-out and uncertain confirmation process is a handicap to judicial recruitment across the board, but it most significantly restricts the universe of lawyers in private practice who are willing to be nominated for a federal judgeship. United States attorneys, public defenders, federal magistrate and bankruptcy judges, and state court judges are often nominated to be district judges. For them the pay is a modest improvement and the confirmation process at least does not damage their current income. Most academic lawyers are in a similar situation. But for lawyers coming directly from private practice, there is both a strong financial disincentive and the possibility of losing clients in the course of the wait for a confirmation vote.

Former magistrate, bankruptcy, and state court judges, as well as prosecutors and public defenders, have served ably as federal district and circuit judges, bringing their insights into the process gained from experience. But we have never had, and should not want, a Judiciary composed only of those persons who are already in the public service. It would too much resemble the judiciary in civil law countries, where a law graduate may choose upon graduation to enter the judiciary, and will thereafter gradually work his way up over time. The result is a judiciary quite different from our common law system, with our practice of drawing on successful members of the private bar to become judges. Reasonable people, not merely here but in Europe, think that many civil law judicial systems simply do not command the respect and enjoy the independence of ours. We must not drastically shrink the number of judicial nominees who have had substantial experience in private practice.

The federal Judiciary has traditionally drawn from a wide diversity of professional backgrounds, with many of our most well-respected judges coming from private practice. As to the Supreme Court, Justice Louis D. Brandeis, who was known as ''the people's attorney'' for his pro bono work, spent his entire career in private practice before he was named to the Supreme Court in 1916 by President Wilson. Justice John Harlan served in several government posts early in his career, but the lion's share of his experience prior to his nomination by President Eisenhower in 1954 was in private practice. When appointed to the Court of Appeals for the Second Circuit, a year before his appointment to the Supreme Court, Justice Harlan succeeded Judge Augustus Hand. Judge Hand and his cousin, Learned Hand, are well known as great court of appeals judges; both spent virtually all the time between their graduation from law school and their appointment as federal judges in private practice. Retired Justice Byron White, who played professional football for the Detroit Lions on the weekends while attending Yale Law School, was in private practice in Colorado for nearly 14 years before joining the Justice Department as deputy attorney general to Robert Kennedy. Less than a year later, President Kennedy named Justice White to the Court. Justice White was the circuit Justice for the Tenth Circuit, where Judge Alfred P. Murrah served as a district judge in Oklahoma and as a judge on the court of appeals. Judge Murrah, who spent his entire career in private practice before becoming a judge, is remembered for much more than having the Oklahoma City federal building named after him. Before being named a judge on the Court of Appeals for the Second Circuit, Justice Thurgood Marshall spent his career in the private sector. He first opened his own law practice in Baltimore and then for many years worked as the top lawyer for the NAACP, becoming known as ''Mr. Civil Rights.'' Justice Marshall left his seat on the court of appeals to become Solicitor General of the United States before President Johnson named him to the Supreme Court in 1967. John Brown, Richard Rives, Elbert Tuttle and John Minor Wisdom, well-known for their courage in enforcing this Court's civil rights decisions as judges on the Court of Appeals for the Fifth Circuit, all served almost exclusively in private practice before their appointments to the bench.

On behalf of the Judiciary, I ask Congress to raise the salaries of federal judges, and I ask the Senate to schedule up or down votes on judicial nominees within a reasonable time after receiving the nomination.

Creating necessary new judgeships

Last year I expressed hope that the 107th Congress would take action on the Judicial Conference's request to establish 10 additional court of appeals judgeships, 44 additional district court judgeships and 24 new bankruptcy judgeships. No additional court of appeals judgeships have been created since 1990. No new bankruptcy judgeships have been created since 1992, although the number of cases filed has increased by nearly 500,000 since then. The 107th Congress has not created a single new judgeship.

Despite a significant increase in workload, the Courts of Appeals for the First, Second, and Ninth Circuits have not increased in size for 17 years—since 1984. During that time period, appellate filings in the First Circuit have risen 65%, in the Second Circuit they have risen almost 58%, and in the Ninth Circuit appellate filings have almost doubled—rising 94.6%. The Judicial Conference has asked that the Congress create one new appellate judgeship for the First Circuit, two judgeships for the Second Circuit, five for the Ninth Circuit and two for the Sixth Circuit, which has had only one additional judgeship since 1984.

Congress has recognized the crisis faced by the overwhelming caseloads in the Southwestern border states. Although we are thankful that Congress has provided additional judges during the 106th Congress for four of the five affected districts, it has not alleviated the very serious problem faced by the Southern District of California, based in San Diego, a district with no judicial vacancies. The judges there have the highest number of filings per judge of any federal district court in the nation and the Judicial Conference has requested that eight additional district judgeships be created for this district.

I urge the Congress to act on all of the pending requests for new judgeships during its next session.

III. INTERNATIONAL JUDICIAL EXCHANGES

The federal Judiciary continues to play a vital role in the development of independent judicial systems in countries around the world. This year over 800 representatives from more than 40 foreign judicial systems formally visited the Supreme Court of the United States seeking information about our system of justice.

On September 25, 2001, I led a small delegation representing the federal Judiciary on a judicial exchange in Guanajuato, Mexico. The visit was at the invitation of Genaro David Góngora Pimentel, President of the Mexican Supreme Court, and followed a similar visit to Washington by a Mexican delegation in November 1999. Our traveling to Mexico within two weeks of the September 11 attacks underscored the importance of this exchange. I am grateful to President Góngora Pimentel and his colleagues for their invitation to meet with them in Mexico and for their commitment to strengthening cross-border judicial relations in North America.

The visit brought home not only the close connections of our two countries, but the importance of working with other judiciaries to improve the functioning of all judicial systems. The Federal Judicial Center, the Administrative Office of the United States Courts, and the International Judicial Relations Committee of the Judicial Conference have also provided many international visitors with information, education, and technical assistance to improve the administration and independence of foreign courts and enhance the rule of law. Through these judicial exchanges, we also gain valuable insights into our own judicial system by exchanging information with foreign visitors and by visiting foreign courts. Improving the administration of justice—here and in other courts around the world—have become even more important in the age of the global economy.

IV. THE YEAR IN REVIEW

The Supreme Court of the United States

The work of the Supreme Court continues to grow modestly, putting an increasing strain on the Supreme Court's building, the infrastructure of which has not been changed in any basic way since the building was opened in 1935. I wish to thank Chairman Byrd, Ranking Minority Member Stevens, Chairman Young, Ranking Minority Member Obey, Chairman Hollings, Ranking Minority Member Gregg, Chairman Wolf, and Ranking Minority Member Serrano for their efforts to secure funds to modernize our Supreme Court building. I am hopeful that the remaining funds necessary to implement our building modernization program, which has been in the planning stage for several years, will be included in our Fiscal Year 2003 appropriation. Significant safety and security upgrades to the Supreme Court building are included in the project and should not be delayed.

The total number of case filings in the Supreme Court increased from 7,377 in the 1999 Term to 7,852 in the 2000 Term—an increase of 6.4%. Filings in the Court's in forma pauperis docket increased from 5,282 to 5,897—an 11.6% rise. The Court's paid docket decreased by 138 cases, from 2,092 to 1,954—a 6.6% decline. During the 2000 Term, 86 cases were argued and 83 were disposed of in 77 signed opinions, compared to 83 cases argued and 79 disposed of in 74 signed opinions in the 1999 Term. No cases from the 2000 Term were scheduled for reargument in the 2001 Term. Although the closing of our building did not delay any scheduled arguments, the interruption in mail delivery in the Washington area may have an impact on the number of cases heard by the Court this Term.

The Federal Courts' caseload

In Fiscal Year 2001, filings in the 12 regional courts of appeals rose 5% to 57,464—a new all-time high.[1] Civil filings in the U.S. district courts fell 3% to 258,517,[2] and, after six consecutive years of growth, the number of criminal cases and defendants declined slightly.[3] The essentially static level of criminal filings was reflected in a 1% gain in the number of defendants activated in the pretrial services system.[4] The number of persons on probation and supervised release went up by 4% to an all-time high of 104,715.[5] Filings in the U.S. bankruptcy courts climbed 14% from 1,262,102 to 1,437,354, following two years of decline.[6]

V. THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

The Administrative Office of the United States Courts serves as the central support agency for the administration of the federal court system. In light of the terrorist attacks of September 11 and the ensuing anthrax contamination, the Administrative Office played a pivotal role in ensuring that the federal courts around the country had effective security precautions and mail-screening procedures in place. An emergency response team was convened to work with the staff of the affected courts in New York to get communications and computer systems working and to return the courts to normal operations as soon as possible. In November 2001, Administrative Office Director Leonidas Ralph Mecham created a Judiciary Emergency Preparedness Office to focus on the planning aspects of crisis response.

Even before September 11, court security was a high priority. A study of the court security program by independent security experts was completed in November. The consultants concluded that although there have been substantial improvements in court security over the last two decades, security needs continue to grow. They recommended options or enhancing the physical security of courthouses, addressing security needs during court proceedings, improving the protection of judges in and outside the courthouse, and conducting background checks on employees. The Judicial Conference's Committee on Security and Facilities and the Administrative Office are currently reviewing the report's recommendations.

One of the Administrative Office's key priorities is to secure adequate funding from Congress so that the federal courts can carry out their critical work and maintain the quality of justice. Director Mecham, Judge John Heyburn II, chair of the Judicial Conference's Budget Committee, and Judge Jane Roth, chair of the Security and Facilities Committee, deserve credit for their efforts in this area. The funding provided to the courts for fiscal year 2002 represents a 7.1% increase and will provide the courts adequate staff (including probation and pretrial services offices) to meet growing workloads. I want to express thanks to the Congress for funding an increase in the rates of pay for private ''panel'' attorneys accepting appointments under the Criminal Justice Act of $90 per hour. This has been a high priority for the Judiciary for several years. I am also pleased to report that Congress has continued to provide significant funds for the courthouse construction program, funding 15 needed courthouse construction projects costing $280 million.

Last year, an independent consultant concluded that the Judiciary is making effective use of technology and that it is doing so with fewer resources invested in technology when compared with other organizations. The Administrative Office continues to develop and implement automated systems that will enhance the management and processing of information and the performance of court business functions. Deployment of a new bankruptcy court case management/electronic case files system began this year, and it is now operating in 14 bankruptcy courts. The system's electronic case files capabilities include the ability to receive and file documents over the Internet. The creation of electronic files will reduce the volume of paper records and make these records more readily accessible. Testing of the district court case management/electronic case files system began in 2001, and development work on the appellate court system is underway.

Under the guidance of the Judicial Conference's Committee on Court Administration and Case Management, the Administrative Office completed a two-year study on how to balance privacy concerns with the rights of the public to access court electronic records. After extensive public comment, the Committee recommended that civil case documents be made available electronically to the same extent they are available at the courthouse (except that certain personal identifiers will be partially redacted). A similar policy will be followed for bankruptcy case documents assuming necessary statutory changes are enacted. The Committee recommended that there be no electronic access to documents in criminal cases at this time. These policies were endorsed by the Judicial Conference in September, and several Conference Committees, supported by Administrative Office staff, are currently working to implement them.

A review of the Judiciary's use of libraries, lawbooks, and legal research materials—both hard copy and electronic—was completed in 2001. While the use of on-line legal resource materials is expanding and continues to show promise for increased use, the study concluded that a clear and compelling need continues to exist for lawbooks and other legal research materials in hard-copy format. The Judicial Conference adopted recommendations to control costs further and to improve the management of court libraries.

VI. THE FEDERAL JUDICIAL CENTER

The Federal Judicial Center, the federal courts' statutory agency for education and research, last year provided education to some 50,000 participants in traditional and distance education programs and continued its research and analysis to improve the litigation process. A few highlights of the Center's work in 2001 follow.

Science and technology. Litigation is increasingly dominated by scientific and technical evidence. The Center's efforts to help judges included its acclaimed Reference Manual on Scientific Evidence, now in its second edition, and a six-part Federal Judicial Television Network series, Science in the Courtroom, on principles of microbiology, epidemiology, and toxicology, and how to manage cases involving these types of evidence. Other judicial education programs dealt with genetics, the human aging process, astrophysics, and the impact of computer technology on the law of intellectual property.

To assist federal judges in dealing with the sophisticated technology many attorneys use to present evidence, the Center provided federal judges its Effective Use of Courtroom Technology: A Judge's Guide to Pretrial and Trial, developed in cooperation with the National Institute for Trial Advocacy. It also provided judges a Guide to the Management of Cases in ADR, which it prepared in light of the growing use of alternatives to traditional litigation.

Management skills for federal courts in uncertain times. Center programs responded to another challenge facing the courts: the need for leadership skills and management practices befitting the complex organizations that federal courts have become. Courts must integrate technology with increasingly sophisticated business practices, and deal with growing caseloads and diverse workforces and litigants, while pursuing their overarching purpose to deliver justice for all.

Demystifying the legal process. The Center assisted the Judicial Conference's Advisory Committee on the Federal Rules of Civil Procedure with a different type of challenge. The Committee has proposed a requirement that attorneys use ''plain language'' in the notices they send to potential class members in class action suits and asked the Center to develop illustrative language as examples. The Center tested alternative workings with focus groups of ordinary citizens typical of class members. This testing explored recipients' willingness to open and read a notice as well as their ability to comprehend and apply the information it contained. From this research, the Center produced illustrative notices, which remain on the Center's Web site (www.fic.gov) for public comment and use.

International judicial cooperation. Given its international reputation, the Center gets frequent visitors from other countries seeking to create or enhance their judicial branch research and education centers. Although it does not use its own funds in responding to these requests, the Center has been of assistance this year in important ways. It hosted seminars or briefings of 422 foreign judges and officials representing 34 countries. The Center also responded to more specific requests for assistance. For example, a delegation from the Russian Academy of Justice spent a week at the Center attending a program on teaching methodology. Three Center representatives traveled to Moscow for a follow-up workshop focusing on distance learning and judicial this. Center personnel also played an important role in the

U.S. delegation's visit to Mexico, which I described earlier, and will continue that relationship by organizing a seminar next May in Washington for interchange with Mexican judicial educators.

VII. THE UNITED STATES SENTENCING COMMISSION

On May 1, 2001, the newly reconstituted United States Sentencing Commission completed its first full sentencing guidelines amendment cycle and submitted to Congress a package of guidelines amendments covering 26 areas. This package of amendment resolved 19 circuit conflicts and included responses to nine new congressional directives (five with emergency amendment authority). For the first time in years, there are no congressional directives awaiting implementation by the Commission.

The amendment include a multi-part, comprehensive economic crimes package with a new loss table that significantly increases penalties for crimes involving high-dollar loss amounts, but gives judges greater discretion in sentencing defendants convicted of crimes with relatively low loss amounts. The amendments also increase the penalties for ecstasy and amphetamine trafficking; counterfeiting; high-dollar fraud offenses; child sex offenses; and the use of nuclear, biological, and chemical weapons. The Commission also expanded eligibility for first-time, non-violent offenders to obtain relief under the guidelines' ''safety valve'' provision and it clarified that participants who play a limited role in a crime are eligible for an adjustment to their sentences under the guidelines ''mitigating role'' provision. The guidelines went into effect November 1, 2001.

On June 19, 2001, the Sentencing Commission held a public hearing in Rapid City, South Dakota, in response to the March 2000 Report of the South Dakota Advisory Committee to the U.S. Commission on Civil Rights, which recommended that an assessment of the impact of the federal sentencing guidelines on Native Americans in South Dakota be undertaken. As a result of suggestions made at the hearing and subsequent written submissions, the Commission is forming an ad hoc advisory group on issues related to the impact of the Federal Sentencing Guidelines on Native Americans in Indian Country.

The Tenth Annual National Seminar on the Federal Sentencing Guidelines, co-sponsored by the Commission and the Federal Bar Association, was held May 16–18, 2001, in Palm Springs, California. More than 400 federal judges, U.S. probation officers, and attorneys attended. During fiscal year 2001, Commission staff also participated in training for thousands of individuals at training sessions across the country (including ongoing programs sponsored by the Federal Judicial Center and other agencies). Commission staff continue to work with the Federal Judicial Center and the Administrative Office to plan and develop educational and informational programming for the Federal Judicial Television Network. During the year, the Commission's ''Helpline'' provided assistance to approximately 200 callers per month.

Finally, congratulations are due to Sentencing Commission Chair Diana E. Murphy who, together with Judge Frank M. Coffin of the U.S. Court of Appeals for the First Circuit, received the 19th Annual Edward J. Devitt Distinguished Service to Justice Award on September 10, 2001. This award recognizes Article III judges who have achieved exemplary careers and have made significant contributions to the administration of justice, the advancement of the rule of law, and the improvement of society as a whole.

VIII. CONCLUSION

Once again the Judiciary can look back upon the year ended as one of accomplishments in the face of adversity. In spite of the terrorist attacks that have affected the entire country, our courts continue to conduct business, day in and day out. We continue to find ways to perform our work more efficiently.

Despite an alarming number of judicial vacancies, our courts continue to serve as a standard of excellence around the world. At bottom, federal judges are able to administer justice day in and day out because of their commitment and the commitment and hard work of court staff around the country. My thanks go out to all of them.

I extend to all my wish for a happy New Year.

END NOTES

[1] Original proceedings surged 48%, largely as a result of a rise in habeas corpus petitions filed by prisoners. Criminal appeals grew 5%, administrative agency appeals increased 2%, and civil appeals rose 1%. Bankruptcy appeals fell 5%. Appeals filings have increased 22% since 1992.

[2] Filings with the United States as plaintiff seeking the recovery of student loans dropped 47%. New administrative procedures implemented by the Department of Education led to fewer such filings in the federal courts. Excluding student loan filings, total civil filings increased 1%. Total private case filings fell less than 1%. Filings related to federal question litigation were consistent with the total decline in private cases, falling less than 1% to 138,441. Diversity of citizenship and civil rights filings each rose less than 1%. Filings related to federal question litigation and diversity of citizenship were greatly affected by the stabilization of personal injury/product liability case filings related to breast implants, oil refinery explosions, and asbestos. Despite an 11% decrease in total filings with the United States as plaintiff or defendant, filings with the United States as defendant increased 10% to 40,644. This was mostly due to a 23% surge in federal prisoner petitions and an 8% rise in social security filings. Motions to vacate sentences filed by federal prisoners grew by 36%. Social security filings related to disability insurance and supplemental security income rose 9% and 6%, respectively. Civil filings have increased 9% since 1992.

[3] Filings of criminal cases dropped by 37 cases to 62,708, and the number of defendants decreased 1% to 83,252. As a result of the creation of 10 additional Article III judgeships, criminal cases per authorized district judgeship declined from 96 to 94. This was the first decrease in cases per judgeship since 1994, when the effects of a hiring freeze on assistant U.S. attorneys was being felt. In succeeding years, federal courts saw increases in criminal filings, primarily due to immigration and drug law-related cases in districts along the Southwestern border of the United States. This year, drug cases rose 5% to 18,425, firearms cases rose 9% to set yet another record at 5,845, traffic cases rose 6% to 4,958, robbery cases rose 8% to 1,355, and sex offense cases rose 8% to 1,017. Immigration filings fell by 873 cases, a 7% decline over last year due to fewer immigration cases reported by the Western District of Texas, the Southern District of California, and the District of New Mexico. However, in the Western District of Texas and in the Southern District of California, the decline in immigration filings was offset by a rise in drug filings. As a result, overall criminal filings increased 2% in the Western District of Texas and declined 3% in the Southern District of California. Criminal filings since 1992 have increased 30%.

[4] In 2001, the number of defendants activated in the pretrial services system increased 1% to 86,140, and the number of pretrial reports prepared rose 1%. During the past five years, pretrial services case activations and pretrial reports prepared each rose 24%, persons interviewed grew 16%, and defendants released on supervision increased 25%. Pretrial case activations have risen each year since 1994, and this year's total is 54% higher than that for 1994.

[5] There is an average lag of several years before defendants found guilty and sentenced to prison appear in the probation numbers. Supervised release following a period of incarceration continues to account for a growing percentage of those under supervision and now stands at 65% of this total. In contrast, the number of individuals on parole is small and declining, composing only 4% of those under supervision. Of the 104,715 persons under probation supervision, 42% had been charged with a drug-related offense. The number of persons on probation has increase 22% since 1992.

[6] Nonbusiness petitions rose 14% and business petitions increased 7%. Filings increased under all chapters except Chapter 12, jumping 17% under Chapter 7, rising 7% under Chapter 11, and increasing 8% under Chapter 13. Bankruptcy filings under Chapter 12, which constituted 0.03% of all petitions filed, fell 31%. This decrease resulted from the expiration of the provisions for Chapter 12 on July 1, 2000. Subsequently, Public Law 107–8 extended the deadline for filing Chapter 12 petitions to June 1, 2001, and Public Law 107–17 extended the deadline further to October 1, 2001. Bankruptcy filings have increased 47% since 1992.

Mr. HATCH. In his report, the Chief Justice stressed the urgent need to fill vacancies promptly, particularly in light of the threats facing our Nation at present. He noted that although the structure and scope of the judiciary have changed dramatically since its creation in 1789,

[O]ne thing has not changed: The Federal courts have functioned through wars, natural disasters, and terrorist attacks. During times such as these, the role of the courts becomes even more important in order to enforce the rule of law. To continue functioning effectively and efficiently, however, the courts must be appropriately staffed. This means that necessary judgeships must be created and judicial vacancies must be timely filled with well-qualified candidates.

In light of the September 11 attacks, I share the Chief Justice's concern about the potential impact of the vacancies on the Federal judiciary and our Nation's ability to fight the war on terrorism. Federal judges are instrumental in combating terrorism by presiding over hearings and trials and by imposing just sentences. What is more, they play a crucial role in protecting civil liberties by ensuring that our law enforcement officials abide by the letter and the spirit of the law. In addition to their integral function in the criminal justice system, Federal judges preside over and decide civil cases that impact everyday business relationships.

Federal judges are tasked with preserving the rights of employers and workers alike. They also provide the certainty of dispute resolution necessary for future business and employment decisions. But when there is a shortage of Federal judges, criminal matters must understandably take precedence due to speedy trial concerns and other concerns. The unintended consequence is that the American workers and their employers are left hanging in limbo when their cases are not being heard in a timely manner.

Today, we have 99 judicial vacancies. This is a far cry from the appropriately staffed judiciary of which Chief Justice Rehnquist spoke. When the Chief Justice addressed the vacancy crisis in the 1997 year-end report, there were 82 empty seats on the Federal bench, nearly 20 fewer than the present situation. Commenting on the 1997 statistic, the Washington Post, in January 1998, in an editorial remarked:

The problem of judicial vacancies is getting out of hand. Nearly 10 percent of the 846 seats on the Federal bench are now empty.

One key Democratic Senator called these figures ''pretty frightening,'' and said, ''If this continues, it becomes a constitutional crisis.''

There are now 99 vacancies, or 17 more than when the editorial and the

statements by the Democratic Senator were made. If 82 vacancies was a serious crisis in 1997, what do we have now with 99 vacancies?

We in the Senate have an opportunity to address this situation. We can make a real difference in the administration of justice in this country simply by fulfilling our constitutional responsibilities of advise and consent. In fact, Chief Justice Rehnquist specifically urged the Senate ''to act with reasonable promptness and to vote each nominee up or down.''

He continued:

The Senate is not, of course, obliged to confirm any particular nominee, but it ought to act on each nominee and to do so within a reasonable time.

I could not agree more with the Chief Justice. This is precisely what I tried to accomplish as Judiciary Committee chairman while abiding by our customs and rules of the Senate. But now some of President Bush's judicial nominees have been waiting more than 8 months for a hearing. All but a handful of them have had their blue slips returned. Their FBI background investigations are completed, and their ABA ratings are submitted.

At a time when our national security is at stake, we have a duty to follow the Chief Justice's admonition and act promptly on these nominees. As we embark on the second session of this Congress, we in the Senate have the perfect opportunity to do just this. I sincerely hope we accomplish this goal. I will continue to cooperate with our Democratic chairman, and I hope the rhetoric on both sides of the aisle is cooled so we can confirm as many as possible of the highly qualified nominees pending before us.

A realistic yardstick of our success will be how President Bush's second year in office will compare to President Clinton's second year in office. In 1994, the second year of President Clinton's first term, the Senate confirmed 100 judicial nominees. I was an integral part of that. I worked very hard to get them confirmed. I had to override people on my side of the aisle and convince some of them that the nominees should be confirmed. As a result of this work, there were only 63 vacancies in the Federal judiciary when the Senate adjourned on December 1, 1994.

I am confident the Republicans and Democrats can work together to achieve or even hopefully exceed the goal of confirming 100 judges in 2002, particularly the many circuit court nominees who are pending to fill emergency vacancies in the appellate courts around this country.

I have been gratified this morning to hear the comments of the distinguished Senator from Vermont that he wants to do that; that he wants to do the best he can, and that he believes we can. I think we are off to a good start.

There are two district court nominees awaiting a vote by the Senate after today. Our first confirmation hearing was held yesterday. We have to keep up the pace of hearings and confirmation votes so we do not fall further behind in filling the vacancies that plague our Federal judiciary.

I look forward to working with our Democratic colleagues to accomplish this goal. Having said that, let me make this clear. We have had a total confirmed since the distinguished chairman took over in the middle of last year of 30 judges. That means 6 circuit court nominees and 24 U.S. district court nominees. I commend my colleague. I think it is certainly a decent start.

On the other hand, we have currently pending 23 circuit court nominations—23. Most of them have well qualified ratings by the ABA. I do not think anybody can make a case that they are not qualified to serve. Just to mention four: John Roberts was one of those nominees submitted by the first President Bush who was left hanging without Senate action back in 1992. Roberts is considered one of the top five appellate lawyers in the country. He is not an ideologue. He is probably more conservative than most of the Clinton nominees were, but the fact is he is a tremendously effective advocate and an excellent nominee for the court. He should not be held up any longer. He went through that back in 1992. Why does he have to go through it again, especially for 8 months?

Miguel Estrada—I am pleased to hear the distinguished Senator from Vermont indicate that he will have a hearing. Miguel Estrada is one of the brightest people in law. He came from Honduras and attended Columbia University as an undergraduate. He graduated with honors and then went on to Harvard Law School and graduated with honors there. He is considered one of the brightest people in law today, and, of course, he is a very successful attorney. He is a Hispanic nominee that I think our colleagues should be pleased that the President has sent to the Senate.

Jeffrey Sutton is one of the best appellate lawyers in the country. He has argued a number of cases in the Supreme Court, including in the last few weeks. He is also a decent human being. He has very good ratings from the ABA. He is a person we ought to put on the Circuit Court of Appeals.

I am pleased the distinguished Senator from Vermont mentioned one of my State's nominees, Michael McConnell. Michael McConnell is considered one of the greatest constitutional experts in the country. I do not think you can categorize him in any particular political pigeonhole. This is a fair and circumspect man who is going to do a tremendous job on the bench.

I asked one of the leading deans of a law school in the country, a very liberal Democrat, what he thought of Michael McConnell. By the way, McConnell was tenured at the University of Chicago before moving to Utah to raise his family. He moved to the University of Utah where he has been a pillar of good teaching ever since. When I asked the liberal dean, ''What do you think of Michael McConnell?'' he said these words:

Senator, I've met two legal geniuses in my lifetime, and Michael McConnell is one of them.

And he is. He is a great nominee.

There are other excellent nominees I would like to mention, but I do not have enough time today.

We have 23 circuit court nominees pending. Many of them have been nominated to seats declared to be judicial emergencies by the Administrative Office of the Courts.

Again, there are 23 U.S. circuit court judges pending, and 36 U.S. district court judges, for a total of 60 who are awaiting action. I am gratified by my colleague from Vermont's expression that he wants to move these nominees through the Senate process. It means a lot to me, and I compliment him for his comments today.

With regard to some of the statistics, we certainly disagree, and we can both make our cases with regard to that. I did want to make some of these points because, to me, it is very important that we make the record clear.

Mr. President, I am also pleased today we have confirmed two excellent judicial nominations. These two nominees are Marcia Krieger and James Mahan. They were unanimously approved by the Senate Judiciary Committee.

I was gratified to see that done on December 13, and I expect the unanimous vote they received today tells everybody the Bush administration is doing a good job on these judgeship nominees.

Our vote today on these two nominees, along with the nominations hearing Chairman LEAHY held yesterday, in my opinion, is a step in the right direction. It is a good beginning to this session.

I think it is important to start our work early because we have a lot of work to do. As I said before, there are presently 99 vacancies in the Federal judiciary, which represents a vacancy rate of almost 12 percent, one of the highest in history.

As Alberto Gonzalez, counsel to President Bush, says in today's Wall Street Journal: The Federal courts desperately need reinforcements.

Mr. President, I ask unanimous consent that the full text of Judge Gonzalez' article be printed in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Jan. 25, 2002]

THE CRISIS IN OUR COURTS

(By Alberto Gonzales)

Federal courts protect constitutional rights, resolve critical civil cases, and ensure that criminals are punished. But as Chief Justice William Rehnquist cautions, the ability of our courts to perform these functions is in jeopardy due to the ''alarming number'' of judicial vacancies, 101 as of today.

President Bush has responded to the vacancy crisis by nominating a record number of federal judges: 90 since taking office, almost double the nominations that any of the past six presidents submitted in the first year. Despite his decisive action, the Senate has not done enough to meet its constitutional responsibility. It has voted on less than half of the nominees. Indeed, it has voted on only six of the 29 nominees to the courts of appeals. And the Senate has failed even to grant hearings to many nominees, who have languished before the Judiciary Committee for months.

For example, on May 9, 2001, the president announced his first 11 nominees. All were deemed ''well qualified'' or ''qualified'' by the American Bar Association, whose rating system Judiciary Committee Chairman Patrick Leahy has called the ''gold standard'' for evaluating nominees. Yet his committee has held hearings for only three of the 11. Although the Senate did confirm 28 judges last year, its overall record was unsatisfactory, given the number of vacancies and pending nominees.

As Congress returns to work, the administration respectfully calls on the Senate to make the vacancy crisis a priority and to ensure prompt hearings and votes for all nominees. The Senate should make this practice permanent, adhering to it well after President Bush leaves office, so as to ensure that every judicial nominee by a president of either party receives a prompt hearing and vote.

The federal courts desperately need reinforcements. There are 101 vacancies out of 853 circuit and district court judgeships. The 12 regional circuit courts of appeals have an extraordinary 31 vacancies out of 167 judgeships (19%). The chief justice recently warned of the dangerous impact the vacancies have on the courts and the American people, and the Judicial Conference has classified 39 vacancies as ''judicial emergencies.''

In 1998, when there were many fewer judicial vacancies, Sen. Thomas Daschle, now majority leader, and Mr. Leahy expressed their concern about the ''vacancy crisis''—with the latter explaining that the Senate's failure to vote on nominees was ''delaying or preventing the administration of justice.''

Today's crisis is worse, and is acute in several places. The D.C. Circuit Court of Appeals, which, other than the Supreme Court, is often considered the most important federal court because of the constitutional cases that comes before it, has four vacancies on a 12-judge court. The Sixth Circuit Court of Appeals has eight vacancies on a court of 16. In March 2000, when that court had only four vacancies, its chief judge stated that it was ''hurting badly and will not be able to keep up with its work load.''

In the past, senators of both parties have accused each other of illegitimate delays in voting on nominees. The past mistreatment of nominees does not justify today's behavior. Finger-pointing does nothing to put judges on the bench and ease the courts' burdens; it only distracts the Senate from its constitutional obligation to act on the president's judicial nominees.

President Bush has encouraged the Senate to act in a bipartisan fashion, both now and in the future. He put it best at the White House last May while announcing his first 11 nominees: ''I urge senators of both parties to rise above the bitterness of the past, to provide a fair hearing and a prompt vote to every nominee. That should be the case for no matter who lives in this house, and no matter who controls the Senate. I ask for the return of civility and dignity to the confirmation process.''

It is time for the Senate to heed his call.

Mr. HATCH. This week, the White House submitted 24 new judicial nominations to the Senate. They are really doing a good job in this White House, and I know it has been difficult for them.

Since we already had 38 nominees still pending from last session, and we confirmed 2 today, we now have a total of 60 nominees awaiting action from the Judiciary Committee. Yesterday's hearing and today's votes make me optimistic we will vote on all of our nominees as expeditiously as possible this year, and I am counting on our chairman to help get that done.

It certainly is possible to confirm all 60 this year, in addition to the other nominations we will receive later. In 1994, the second year of President Clinton's first term, as I mentioned earlier, the Senate confirmed 100 judicial nominees. I am confident Republicans and Democrats can work together to achieve or even hopefully exceed this number in 2002, particularly with regard to the many circuit court nominees pending to fill emergency vacancies in appellate courts around this country. To do this, we have to keep up the pace of hearings and confirmation votes so we do not fall further behind in filling the vacancies that plague our Federal judiciary.

As Chief Justice Rehnquist noted, and as I have stated, in his 2001 year-end report:

> To continue functioning effectively and efficiently . . . the courts must be appropriately staffed.
>
> This means that necessary judgeships must be created and judicial vacancies must be timely filled with well-qualified candidates.

So I sincerely hope we will accomplish this goal. I look forward to cooperating with my chairman, the distinguished Senator from Vermont, and all of our other Democrat colleagues, and I hope the rhetoric on both sides of the aisle is cooled so we can confirm as many as possible of the highly qualified nominees pending before us.

Today's nominees are good examples of the kind of highly qualified nominees President Bush has submitted to the Senate. Chief Bankruptcy Judge Marcia Krieger, who has been nominated to the District Court in the District of Columbia, attended Lewis & Clark College, from which she graduated after 3 years summa cum laude, and earned her law degree from the University of Colorado School of Law. She has experience as a lawyer and as a specialist in bankruptcy. She has served as a bankruptcy court judge since 1994.

Judge James Mahan, who has been nominated to the District Court for the District of Nevada, achieved a great reputation as a lawyer in Las Vegas for 17 years, primarily focusing on business and commercial litigation. In the process, he earned an AV rating from the Martindale-Hubbell legal directory, high praise from his peers. I have held that rating from the earliest day it could be given to me, and I understand what goes into getting an AV rating. It is very important because it is a secret ballot by your peers, some of whom may not like you but nevertheless acknowledge you are of the highest legal ability and legal ethics. And he has that rating.

In February 1999, he was named a judge on the Clark County District Court. Since taking the bench, Judge Mahan has heard civil and criminal matters and trials involving a 3,000 case docket.

Both Judge Krieger and Judge Mahan have already established themselves as capable jurists. After today, they will be able to share their expertise in the Federal system, and I am confident they will bring honor and dignity to the Federal district court bench. I am very pleased our colleagues have unanimously confirmed both of them.

Again, I thank my good friend and distinguished chairman of the Judiciary Committee for the work he has done up to now, and hopefully we can do better in the future. I appreciate being able to work with him.

The PRESIDING OFFICER (Mr. LEVIN). The Senator from Vermont.

Mr. LEAHY. Mr. President, I appreciate the words of my friend from Utah. Obviously, we cannot determine the course the White House might take. They can make that decision on their own, and I expect will. We can only determine what the Senate does. As I said before, it is advise and consent, not advise and rubberstamp.

I only urge the White House to seek, as Presidents have throughout my lifetime, advice from the home State Senators of both parties on judgeships. Senator HATCH and I can move far more quickly on judges when that kind of consensus has been reached, just as we have demonstrated by moving through numerous conservative Republican nominees but for whom there was consensus.

Frankly, it would be a much easier job if only the Senator from Utah and I had to make these decisions. Again, I hope the White House will listen to what the two of us have been saying. We have demonstrated we will work together. They also have to help. They have to help in the consultation. They have to help in getting the information on to the FBI, and the ABA reports. They have to also make sure when they speak about these issues they speak accurately.

I thank my good friend from Utah for his comments. I will continue to work with him.

I also see the distinguished assistant Republican leader. He and the assistant Democratic leader, Senator REID, have worked very closely together with each other to try to schedule votes on judges. Both have worked with me and with Senator HATCH. I think that is helpful. It reflects the way the Senate is supposed to work. Our distinguished leaders, Senator DASCHLE and Senator LOTT, have worked closely on this and will continue to do that.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I thank my friend and colleagues from Vermont and Utah for their comments. On the issue of judges, I think the Senate, and particularly with the leadership of both Senator LEAHY and Senator HATCH, did very well on district court judges. We moved a total of 28 judges last year, and 2 now, so that is 30 judges we have confirmed this Congress, 6 of whom were circuit court judges and the rest were district court judges. So I compliment them.

The percentage of district court judges has been a good percentage for the number who were nominated through the summer. So that was good. On circuit court judges, the record is not quite so good. We have confirmed six. President Bush has nominated 29.

I comment to the chairman of the committee and the ranking member of the committee, there are 23 circuit court judges, only 1 of whom has had a hearing. In the 23 who are pending, there are some outstanding nominees. For example, Miguel Estrada is a native Honduran who came to the United States. He graduated top of his class from Columbia and Harvard Law School. He has argued 16 cases before the Supreme Court. I hope we have a hearing for him. He was nominated in May, so I again ask the chairman of the committee, before he leaves—before he leaves, I wanted to again compliment him for the work he has done on district court judges. I think we have made good progress, but on circuit court judges there are 23 who are pending, 1 of whom has had a hearing, Judge Pickering, but of the 22 who have not had a hearing, several are outstanding, many of whom were nominated in May. I believe eight were nominated in May. I urge my friend and colleague to take a look at such outstanding individuals. I mentioned Miguel Estrada, John Roberts. Miguel Estrada argued 16 cases before the Supreme Court; John Roberts, also for the D.C. Circuit Court of Appeals, argued 36 cases before the Supreme Court. Undoubtedly, they are two of the most well-qualified individuals anywhere in the country. They have yet to have a hearing scheduled.

I say thank you. The Senator has moved all of the district court judges from Oklahoma. I am pleased about that. All four were sworn in and will be good consensus judges. I ask and urge my colleague to move forward as quickly as possible on the 23 circuit court nominees, schedule their hearings, and see if we cannot move some of those nominees through as soon as possible.

Mr. LEAHY. If the Senator will yield, that question is directed toward me. I say to the distinguished Senator from Oklahoma that while he was off the floor attending to other duties, I laid out some plans and intentions for the handling of judicial nominees, including those for the courts of appeals—I believe those are some of those mentioned—including Mr. Estrada and others were referenced. With adequate cooperation, we will be able to move forward. We held hearings yesterday on another court of appeals nominee, Michael Melloy, of Iowa; as well as hearings on Robert Blackburn, to be U.S. district judge for the District of Colorado; and James Gritzner, to be U.S. district court judge for the Southern District of Iowa; and Cindy K. Jorgenson, to be U.S. district judge for the District of Arizona; and Richard J. Leon, to be U.S. district judge for the District of Columbia; and Jay C. Zainey, to be U.S. district judge for the Eastern District of Louisiana. Those hearings were held within 28 hours of coming back into session.

Mr. NICKLES. I thank my colleague. The committee has done a wonderful job on district court judges, and I urge them to consider some of the circuit court nominees.

NOMINATION OF MARCIA S. KRIEGER

Mr. ALLARD. Mr. President, it is both an honor and a privilege to stand before my colleagues today and thank them for accepting the nomination of The Honorable Marcia S. Krieger to the U.S. District Court for the District of Colorado. Marsha S. Krieger is a person of outstanding legal credentials, and has served the people of Colorado and the United States with great diligence and dedication for many years.

Judge Krieger has strong ties to Colorado and is familiar with the issues faced by people in the State, an important aspect of any Federal judge who will work with fellow citizens through a myriad of complex litigation settings. She graduated from the University of Colorado School of Law, and has since spent many years as a sole practitioner, practicing in a law firm, and, most recently, serving as Judge.

Since 1994, Judge Krieger has served on the Bankruptcy Court—a key indicator of her efficiency and effectiveness; she was also unanimously chosen by the federal judges to become Chief Bankruptcy judge in January 2000.

However, practicing law is not her only passion. Judge Krieger, manages to find time to teach, sharing her knowledge of the law with future attorneys, teaching in a manner that provides hands-on learning, sharing with students her passion for the law.

Marsha Krieger presides over the court with a stern hand and keen intellect—she has the ability to decisively pull the issue from complex litigation with certainty and accuracy.

According to an article in the Denver Post, Judge Krieger is widely respected by other judges and by lawyers that have appeared before them. She has extensive experience, solid knowledge of the law, and has a reputation for fairness.

This vote is significant for many reasons—Colorado hasn't added a judge since 1984. Making matters more serious, only four active judges struggle to do the work of nine judges.

The legal community believes the Judge to be well qualified as well. The Honorable Lewis T. Babcock, Chief Judge of the United States District Court for the District of Colorado, in a letter to Senator LEAHY and Senator HATCH stated, ''I know Judge Krieger, and believe her to be well qualified.''

I thank Senator HATCH and Senator LEAHY.

I ask unanimous consent to print in the RECORD the editorial from the Denver Post and the letter from the Honorable Lewis T. Babcock, Chief Judge of the U.S. District Court for the District of Colorado.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

BUSH TAPS 2 JUDGES

Tuesday, September 11, 2001.—The White House nominated two distinguished Colorado judges to the U.S. District Court yesterday, and both will receive the full support of U.S. Sens. Wayne Allard and Ben Nighthorse Campbell.

President Bush's nominations, as predicted in these pages Aug. 12, recommend U.S. Chief Bankruptcy Judge Marsha Krieger and 16th Judicial District Judge Robert Blackburn for the bench.

We are delighted by the White House decision. Both judges have extensive experience, solid knowledge of the law and a reputation for fairness. They are widely respected by other judges and by lawyers who have appeared before them.

Both should prove extremely helpful to the Federal court in Colorado, which hasn't added a judge since 1984 despite increasingly complex and mushrooming caseloads.

We commend Republicans Allard and Campbell, as well as the White House, for pushing to fill these vacancies quickly. We also congratulate the senators for zeroing in on such highly qualified candidates.

Krieger, daughter of retired Colorado Court of Appeals Judge Don Smith, has served on the Bankruptcy Court since 1994 and was unanimously chosen by the federal judges to become chief bankruptcy judge in January 2000.

Blackburn has been one of two district judges serving Bent, Crowley and Otero Counties since 1988, having previously served simultaneously as a deputy district attorney, Bent County attorney, and municipal judge and attorney for the town of Kim.

Both judges are graduates of the University of Colorado School of Law.

The next step calls for the Senate Judiciary Committee to send ''blue slips'' to Colorado's senators. Allard and Campbell then will return the blue slips, signaling their approval of Krieger and Blackburn.

Next, the Judiciary Committee will independently investigate the candidates and vote on whether to approve them. The nominations then would be sent to the Senate floor, and approval there would result in ''judicial commissions'' by the president.

The Senate process often drags on for months and months. We urge the committee and the full Senate to exercise all reasonable speed with the Krieger and Blackburn nominations. The long-overworked federal court of Colorado needs qualified new judges, and it needs them now.

U.S. DISTRICT COURT,
DISTRICT OF COLORADO,
Denver, CO, September 20, 2001.

Hon. PATRICK LEAHY,
Russell Senate Office Building,
Washington, DC.

Hon. ORRIN HATCH,
Dirksen Senate Office Building,
Washington, DC.

DEAR SENATORS LEAHY AND HATCH: In this time of national crisis I appreciate that you have much added to your ordinary labors in government. I take to heart our president's admonition to go to work and do our jobs. It is axiomatic that our federal judiciary must perform not only its usual role under our Constitution, but a heightened role in response to terrorism. Specifically, at this time this nation requires that judicial vacancies be fairly and expeditiously filled.

More specifically, I urge you to act expeditiously on the confirmation of nominees Marsha Kreiger and Robert Blackburn to vacancies existing in the United States District Court for the District of Colorado. I know Judge Kreiger and Judge Blackburn and believe them to be well qualified. As you know, the Honorable Richard P. Matsch did much to restore this nation's confidence in its courts during the trials of McVeigh and Nichols. He is now recovering from recent liver transplant surgery. It will be a long period of recovery. So, the District of Colorado struggles to do the work of seven active judges with four. By the way, the Judicial Conference of the United States has approved two additional seats for the District of Colorado. Thus, the District of Colorado struggles to do the work of a demonstrated need for nine active judges with four active judges.

I urge you not only to act to fill the existing two vacancies, but to address the demonstrated need for two additional seats in this district.

NOMINATION OF JAMES C. MAHAN

Mr. ENSIGN. Mr. President, it is an honor to come before the U.S. Senate today to lend my support to a man of the highest legal distinction, Judge Jim Madhan.

A long-time resident of Las Vegas, NV, Judge Mahan began his studies not in our great State, but at the University of Charleston in Charleston, WV. Following graduation he attended graduate school before joining the U.S. Navy where he served until honorably discharged in 1969. Jim then studied and graduated from Vanderbilt University Law School.

Following graduation, Judge Mahan began his work in Nevada, first as a law clerk and then as an associate attorney. In 1982 he formed the law firm of Mahan & Ellis, where he practiced law primarily in the areas of business and commercial litigation for 17 years. In February 1999, Judge Mahan's legal experience and expertise were recognized by Gov. Kenny Guinn, who named him as his first appointment to the Clark County District Court.

Since taking the bench, Judge Mahan has heard civil and criminal matters involving a 3,000 case docket assigned to him. Judge Mahan's service on the bench has been of the highest order. He has overseen many of Nevada's most complex and controversial cases since taking the bench and has done so with great care, fairness, and prudence. In a survey conducted last year by Nevada's largest newspaper, Judge Mahan's retention rates scored the highest of any judge serving on State or local court in Nevada, and that includes the Nevada Supreme Court.

Judge Mahan's extensive legal background and his commitment to public service make him an excellent choice as U.S. District Court Judge for the District of Nevada. I know his wife Eileen and his son James, Jr., are proud of him for being here today, and the State of Nevada is proud of Jim and all that he represents for our great State. I am proud to support Judge Jim Mahan before the Senate today.

HOPE FOR CHILDREN ACT—Continued

AMENDMENT NO. 2717

Mr. NICKLES. I ask unanimous consent to set aside the pending amendment and send an amendment to the desk on behalf of Senator BOND, Senators COLLINS, ENZI, ALLEN, and Senator NICKLES.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oklahoma [Mr. NICKLES], for Mr. BOND, for himself, Ms. COLLINS, Mr. ENZI, Mr. ALLEN, and Mr. NICKLES, proposes an amendment to the language proposed to be stricken by amendment No. 2698.

Mr. NICKLES. Mr. President, I ask unanimous consent reading of the amendment be dispensed.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To amend the Internal Revenue Code of 1986 to provide for a temporary increase in expensing under section 179 of such code)

At the end, add the following:

SEC. ___. TEMPORARY INCREASE IN EXPENSING UNDER SECTION 179.

(a) IN GENERAL.—The table contained in section 179(b)(1) of the Internal Revenue Code of 1986 (relating to dollar limitation) is amended to read as follows:

"If the taxable year begins in:	The applicable amount is:
2001	$24,000
2002 or 2003	$40,000
2004 or thereafter	$25,000.''

(b) TEMPORARY INCREASE IN AMOUNT OF PROPERTY TRIGGERING PHASEOUT OF MAXIMUM BENEFIT.—Paragraph (2) of section 179(b) of the Internal Revenue Code of 1986 is amended by inserting before the period ''($325,000 in the case of taxable years beginning during 2002 or 2003)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

Mr. NICKLES. Is there an amendment pending by Senator Allen?

The PRESIDING OFFICER. There is no amendment at the desk; there is a submitted amendment from Senator ALLEN.

Mr. NICKLES. Parliamentary inquiry: What is the number of that amendment?

The PRESIDING OFFICER. It is 2702.

Mr. NICKLES. Mr. President, I ask unanimous consent to set aside the pending amendment and ask consent to call up amendment No. 2702 on behalf of Senator ALLEN.

The PRESIDING OFFICER. In my capacity as a Senator from Michigan, I object to that. I understand there is an objection.

Mr. NICKLES. I ask unanimous consent this be the next Republican amendment filed in the normal course of business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NICKLES. I thank my friends and colleagues.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. I rise to speak on the Bond-Collins amendment and give a little explanation of what has been submitted. I am sure most of the Members of this body will want to back an amendment that supports small business in the way that this particular amendment does. Senator BOND, of course, has worked extensively on it and is the ranking member on the Small Business Committee. Senator COLLINS has been involved in small business most of her life. I appreciate all the thought and effort that went into this amendment. It will provide an immediate economic stimulus and will provide a stimulus for small businesses in this country. The details of this are very limited to small business. However, it is an area that will help out immediately a wide range of businesses, and I will explain how that will happen.

I appreciate this opportunity to talk about what our Nation and my State of Wyoming need in the way of an economic stimulus package. I will talk on a broader issue first and then get into the details of this particular amendment. While I have a degree in accounting, you don't need to be an accountant to know that something needs to be done to kick-start our economy. We ended Congress last year with a well-crafted economic stimulus bill that had bipartisan support, which the House passed, and the President said he would sign. In short, it was a bill worked out over several months of tough negotiations involving the administration and congressional Democrats and Republicans. It included unemployment compensation and health insurance for unemployed workers. It included tax relief for hard-working individuals and families, and it included much needed help for America's small businesses.

I was disappointed about the majority leader's refusal to schedule the bipartisan bill for a vote before the recess. Today, rather than having an opportunity to vote on that bill, we are suddenly faced with a vote on a totally new bill.

The bill we are currently debating did not go through the normal congressional process. Instead, it was filed quickly. It was filed with little input from our Senate colleagues on either side of the aisle, and it was brought to the floor for purposes of a vote.